

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 84-01
(March 3, 1984)

**Potential Conflicts of Interest When Judge Approves
Payments for Services Provided by Spouse's Business**

Issues

1. Is it a conflict of interest or an appearance of impropriety for a judge's wife or her partner to perform domestic services for persons under guardianship and conservatorship?

Answer: Qualified no.

2. As the probate judge, would the judge have a conflict of interest if an accounting was submitted to him for approval where that accounting itemized expenditures to his wife's business if he approved the accounting?

Answer: Yes.

3. As the probate judge, would the judge have a conflict of interest if an accounting was submitted to him for approval where that accounting itemized expenditures to his wife's business but he assigned that case to another judge in the county for approval or disapproval?

Answer: No.

4. As the presiding judge for the county, would the judge have a conflict of interest if an accounting was submitted to another designated probate judge of the county where that accounting itemized expenditures to his wife's business?

Answer: No.

Facts

A judge's wife and a friend propose to commence a business to provide personalized domestic services to the community for which they will charge a fee. Their services may be provided to some people who are under guardianship or conservatorship either through relatives or the county public fiduciary. Fees for their services would be paid from funds in the guardianship or conservatorship and would have to be approved by a probate judge.

Discussion

Issue 1

Being a judge does not prohibit or prevent a spouse from entering into a business to perform services for a person who may have a guardian or conservator unless the employ-

Advisory Opinion 84-01

ment would require an order or the judge's approval to hire or contract with his wife's business for the service, and provided also that the prestige of his office is in no way associated with the advancement of the business enterprise. *See* Canon 2B. If such order or approval was required, it would directly conflict with Canon 3C(1)(c)(d). If the services were contracted for without the judge's prior approval or order, there would be no conflict.

Issue 2

Canon 3C(1)(c) and (d) provide:

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where: (c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding . . . (d) he or his spouse . . . (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.

In the assumed facts presented, the judge would have a definite conflict as not only would his wife and his wife's business be involved, but because of the community property interest, he personally would have an interest in the amount of money authorized to be paid or the payment thereof approved.

Issue 3

If the judge could avoid any appearance of influencing the decision of another judge, there would be no conflict that would violate Canon 2A which provides that, "A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." For example, we see no conflict in the judge's wife acting as a guardian or conservator of an estate where another judge handles all matters pertaining to the estate.

Issue 4

See discussion of Issue 3.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2A and B and 3C(1)(c) and (d) (1975).